REMARKS/ARGUMENTS

In accordance with the foregoing, claims 12, 24, 35, 36 and 38-47 have been amended. Claim 37 has been cancelled. Therefore, after entry of the foregoing claim amendments, claims 1-12, 14-24, 35, 36 and 38-48 will be pending in this application.

No new matter is being presented, and approval of the amended claims is respectfully requested.

Claim Objections

On page 2 of the Action, the Examiner objects to claim 12 because the term "the ROT" lacks antecedent support and the acronym "ROT" is not spelled out. Independent claim 12 is amended herein to correct these informalities. As a result, the objection is respectfully overcome.

Claim Rejections – 35 USC § 103

Claims 1-3, 12, 14, 15, 22, 24, 35-39, 46 and 48 are rejected under 35 USC § 103(a) as being unpatentable over Al-Housami (U.S. Patent No. 7,050,814). The rejection is respectfully traversed and reconsideration is requested. The following is a comparison between embodiments of the present invention and the cited reference.

Independent claim 1, for example, recites determining whether an outage of communication has occurred; increasing the ROT threshold by a predetermined increment if the outage has not occurred; and decreasing the ROT threshold by a predetermined decrement if the outage has occurred. According to embodiments of the present invention, when it is determined that an outage has occurred (*e.g.*, if an access terminal transmitting at the lowest data rate experiences two frame errors over two consecutive packets), then the ROT threshold is decreased. If an outage has not occurred, the ROT threshold is increased. (See, for example, paragraph [1031] of the present specification).

The Examiner notes that Al-Housami does not explicitly disclose increasing the ROT threshold by a predetermined increment if the outage has not occurred or decreasing the ROT threshold by a predetermined decrement if the outage has occurred. However, the Examiner states that Al-Housami teaches dynamically selecting a loading threshold based on traffic users,

and alleges that it would be obvious to check for an outage instead of checking the traffic users to determine the loading threshold in order to lower outages.

Al-Housami discloses a system that selectively changes thresholds based on the currently applicable traffic mix (*i.e.*, the mix of high data rate transmissions and low data rate voice transmissions). The threshold can be selected so that traffic is below the threshold for a selected proportion of the time. A stable system may be provided when there is a higher proportion of high data rate users, while allowing a greater number of connections during periods when fewer high data rate users are active. A cell currently experiencing a load peak may be allocated appropriate resources as needed. (See column 3, lines 11-50).

As the Examiner suggests, Al-Housami discloses that a loading threshold is *increased* when data traffic (*i.e.*, high data rate) is higher than voice traffic (*i.e.*, low data rate). The threshold is *decreased* when voice traffic is higher than data traffic. Thus, Al-Housami is directed to allocating resources depending on peak traffic, while returning to a more stable condition as the load peak is reduced.

Therefore, Al-Housami does not teach or suggest increasing the ROT threshold by a predetermined increment if the outage **has not** occurred; and decreasing the ROT threshold by a predetermined decrement if the outage has occurred, as recited in independent claim 1. In fact, Al-Housami, as the Examiner contends, *increases* the threshold when high data rate traffic is high.

In addition, the Examiner states that one skilled in the art would appreciate that Al-Housami could check outage of communication instead of checking the traffic users to determine the loading threshold. (See page 3, last paragraph, of the Action). The present specification states that an outage is declared for an access terminal when the access terminal, transmitting at the lowest data rate, experiences two frame errors over two consecutive packets. (See paragraph [1031]). It is submitted, therefore, that merely "checking the traffic users", as described by Al-Housami, should not be considered equivalent to "determining whether an outage of communication has occurred", as recited in independent claim 1.

In light of the foregoing remarks, it is respectfully submitted that the foregoing rejection of independent claim 1 should be withdrawn. The remaining independent claims recite features substantially similar to those described above with reference to independent claim 1 and, thus, the rejections thereof, as well as the pending dependent claims, should be withdrawn as well.

Allowable Subject Matter

On pages 5-6, item 5, of the Action, the Examiner notes that claims 4-11, 16-21, 23 and 40-45 are objected to as being dependent upon a rejected base claims but would be allowable if rewritten in independent form. It is submitted, however, that the pending independent claims from which these claims depend patentably distinguish over the cited art for the reasons provided above. Thus, it is further submitted that the pending dependent claims are patentable as they stand.

CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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